UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/695,948 | 10/30/2003 | Mark Henry Butler | 300202359-2 | 6277 |

22879 7590 11/13/2008

HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

| EXAMINER | |
|---|---|
| JAKOVAC, RYAN J | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 2445 | |

| NOTIFICATION DATE | DELIVERY MODE |
|---|---|
| 11/13/2008 | ELECTRONIC |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

JERRY.SHORMA@HP.COM
mkraft@hp.com
ipa.mail@hp.com

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/695,948 | BUTLER, MARK HENRY | |
| | Examiner | Art Unit | |
| | RYAN J. JAKOVAC | 2445 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *11 August 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-5,10-13,19,20,22-40,49,51 and 52* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5, 10-13, 19, 20, 22-40, 49, 51-52* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 10, 49, 51-52 rejected under 35 U.S.C. 102(b) as being anticipated by US 2002/0032754 to Logston et al (hereinafter Logston).

Regarding claim 49, Logston teaches the computer readable medium which when run on a processor of a networked resource server, reads delivery context aware related data from a contact log of said server and processes said data to provide processed acquired data relating to delivery context aware requests for resources made of the server (Logston, [0081-0082]), and which computer readable medium causes said processed acquired data to be transmitted out of a network port of the sever proactively, without an input trigger signal from outside of the server (Logston, [0048-0049], See also, [0059-0062] data is sent proactively out of the server to a plurality of remote databases. See also, fig. 4-4a.).

Regarding claim 10, 51, Logston teaches a networkable resource server adapted in use to serve out resources to client devices of a network, the server having a resource request

monitoring computer readable medium which when run on a processor of the server causes a report to be produced containing data related to or influenced by at least one of the group: (i) whether the requests for resource contain information relating to the capabilities of a client device to receive and/or process and/or display data; (ii) the capabilities of the resource server to output resources having different network transmission and/or data-presentation characteristics; (iii) network transmission and/or data-presentation characteristics of an intermediary device in said network disposed in a communication pathway between said client device and said resource server; (iv) the characteristics of settings of configurable settings of the server, or client device, or an intermediary device in a communication pathway in the network between the resource server and the client device (Logston, [0046-0049], [0062], [0081-0082]).

Regarding claim 52, Logston teaches a networkable resource server adapted in use to serve out resources to client devices of a network, the server having a resource request monitoring computer readable medium which when run on a processor of the server causes a report to be produced containing data related to or influenced by at least one of the group: (i) success rate of the server being able to obtain reference profiles; (ii) the level of churn occurring in a reference profile cache of the server; (iii) the level of usage of individual reference profiles in a reference profile cache of the server; (iv) the proportion of requests for resource received by the server that contain delivery context information; (v) errors detected in reference profiles; (vi) vocabulary in reference profiles that is unrecognized by said server; (vii) the proportion of requests for resources received by the server that use profile differences; (viii) the proportion of client devices that make requests of the server for resources that use profile differences; (ix) the

number of intermediary devices in a communication chain from a client device to the server that influence the delivery context information of the requests; (x) the number of configurable settings of devices involved in making and communicating a request of the server for resources, and in returning the requested resources to the client device, that influence the delivery context information in the request (Logston, [0046-0049], [0059], [0062], [0081-0082]).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-5, 11-13, 19, 20, 22-40 rejected under 35 U.S.C. 103(a) as being unpatentable over Logston in view of Windows NT Server.

Regarding claim 1, 5, Logston teaches a networkable resource server adapted in use to serve out resources to client devices of a network (Logston, abstract, transfer of device resource and configuration information, distribution of entity components, also, paragraph [0037], paragraph [0042-0043], server serves resources to client, also, paragraph [0055], client query to server. Fig. 1, client server relationship.), the server having delivery context aware activity software which when run on a processor of the server causes a report to be produced containing data related to delivery context aware requests, received by the server for resources (Logston,

paragraph [0046], server contains database of configuration information relating to client devices, See at least paragraphs [0048-0049], [0052], [0059], [0061], [0082].),

Logston does not expressly disclose wherein the report includes information concerning characteristics of the server, network characteristics linking the server and the client devices, characteristics of the client devices, and characteristics of any intermediary devices in a network path between the client devices and the server, however, Windows NT Server discloses wherein the report includes information concerning characteristics of the server, network characteristics linking the server and the client devices, characteristics of the client devices, and characteristics of any intermediary devices in a network path between the client devices and the server (Windows NT Server, pg. 404-411, Enhancing File System Securing through Auditing, auditing is enabled which provides a detailed report on network activity. See also pg. 980-985 which disclose the monitoring and logging of disk performance.)

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to combine wherein the report includes information concerning characteristics of the server, network characteristics linking the server and the client devices, characteristics of the client devices, and characteristics of any intermediary devices in a network path between the client devices and the server as taught by Windows NT Server with the networkable resource server of Logston in order to maintain a log of audited events relating to server access (Windows NT Server, pg. 404).

Regarding claim 2, 20, 24, the combination of Logston and Windows NT Server teaches a server and computer readable medium according to claim 1 and 19 adapted to transmit the

report externally of the server to another processor (Logston, paragraph [0048], [0062]. information sent to external and remote computers. See also paragraph [0082]).

Regarding claim 3, 10, 19, 22, The combination of Logston and Windows NT Server teaches a server and computer readable medium according to claim 1 and 19 in which there is provided a data log held in a data log memory, the data log being adapted to store data on activity of the server, including information on delivery context aware activity (Logston, paragraph [0046], server contains database of configuration information relating to client devices, See at least paragraphs [0048-0049], [0052], [0059], [0061], [0082].), and wherein the delivery context aware activity software is adapted to interrogate the data log to obtain the data related to delivery context aware requests for resources received by the server (Logston, paragraph [0082], statistics calculated and stored in database.), which is adapted to cause acquired data to be sent out of the server proactively, without an input trigger signal from outside of the server (Longston, [0059-0062], data is sent proactively out of the server to a plurality of remote databases. See also, fig. 4-4a.).

Regarding claim 4, The combination of Logston and Windows NT Server teaches a server and computer readable medium according to claim 1 adapted proactively to send out said report onto the network to which the server is connected (Logston, paragraphs [0048-0049], [0062].).

Regarding claim 11, 23, 26, 27, 28, The combination of Logston and Windows NT Server teaches a method and computer readable medium according to claim 10, 19, 24, 26 comprising, responsive to said assessment, modifying a cache reference profile memory to thereby change data stored in the cache reference profile memory that is directly accessible by the server (Logston, paragraph [0052], Stored profile records (i.e. cache reference profile memories) are added, modified, and removed.).

Regarding claim 53, The combination of Logston and Windows NT Server teaches the method according to claim 11 comprising, responsive to said assessment, modifying a size of the cache reference profile memory to thereby change an amount of data capable of being stored therein (Logston, paragraph [0052], Stored profile records are deleted, thereby changing an amount of data capable of being stored therein.).

Regarding claim 12, 13, 25, 29, 39, 40 The combination of Logston and Windows NT Server teaches a method and computer readable medium according to claim 10, 19, 24, and 26 comprising, responsive to said assessing, seeking a reference profile from a different reference profile repository to that from which the server has previously sought the reference profile (Logston, [0048-0051], profile information acquired from slave portion and client portion, see also paragraph [0081].).

Regarding claim 30, The combination of Logston and Windows NT Server teaches the computer readable medium according to claim 19 adapted to evaluate whether the server successfully retrieves reference profiles (Logston, [0059].).

Regarding claim 31, The combination of Logston and Windows NT Server teaches the computer readable medium according to claim 19. Logston discloses monitoring usage statistics and profiling information in paragraphs [0046] and [0082]. Logston does not expressly disclose monitoring the frequency of deletes in a reference profile cache of the server. However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability. See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the nonfunctional descriptive material with the claimed invention because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the descriptive material does not patentably distinguish the claimed invention.

Regarding claim 32, The combination of Logston and Windows NT Server teaches the computer readable medium according to claim 19 adapted to evaluate the level of usage of reference profiles in a reference profile cache of the server (Logston, paragraph [0046], [0082].).

Regarding claim 33, The combination of Logston and Windows NT Server teaches the computer readable medium according to claim 32 which is adapted to establish a usage level parameter indicative of the usage of a reference profile for each reference profile (Logston, paragraph [0046], [0082].).

Regarding claim 34, The combination of Logston and Windows NT Server teaches the computer readable medium according to claim 33. Logston discloses usage statistics in paragraphs [0046], and [0082]. Logston does not expressly disclose wherein said usage level parameter comprises the ratio of the time since a specific reference profile was entered into the profile cache and the number of times the particular reference profile has been retrieved from the cache since it was entered into it.

However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability. See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the nonfunctional descriptive material with the claimed invention because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the descriptive material does not patentably distinguish the claimed invention.

Regarding claim 35, The combination of Logston and Windows NT Server teaches the computer readable medium according to claim 19 adapted to monitor the fraction of devices requesting resources, and/or requests for resources from the server that are delivery context aware (Logston, paragraph [0046], [0082].).

Regarding claim 36, The combination of Logston and Windows NT Server teaches the computer readable medium according to claim 19 adapted to monitor whether client devices are using a profile that contains errors (Logston, [0059].).

Regarding claim 37, The combination of Logston and Windows NT Server teaches the computer readable medium according to claim 19 adapted to monitor whether a profile references a vocabulary description that either the server has not been preconfigured to recognize or that it cannot retrieve from a vocabulary reference (Logston, [0059].).

Regarding claim 38, The combination of Logston and Windows NT Server teaches the computer readable medium according to claim 19 adapted to monitor the number of profile differences used in an individual request for resources (Logston, [0046].).

***Response to Arguments***

1. Applicant's arguments filed 08/11/2008 and directed towards claims 11, 49, 51, 52, have been fully considered but they are not persuasive.

2. Regarding Applicant's arguments (towards claim 11) that Logston does not disclose changing data stored in the cache reference profile memory that is directly accessible by the server as per claim 11. The examiner respectfully disagrees. Logston, in at least paragraph [0052] discloses that stored profile records (i.e. cache reference profile memories) are added, modified, and removed.

3. Regarding Applicant's arguments (towards claim 49) that Logston does not disclose transmitting data out of the server proactively, "without an input trigger signal from outside of the server" as per claim 49. The examiner respectfully disagrees. Logston in at least paragraph [0062] discloses that data is sent proactively out of the server to a plurality of remote databases.

4. Regarding Applicant's arguments (towards claims 51 and 52) that Logston does not teach (iii) network transmission and/or data-presentation characteristics of an intermediary device in said network disposed in a communication pathway between said client device and said resource server; (iv) the characteristics of settings of configurable settings of the server, or client device, or an intermediary device in a communication pathway in the network between the resource server and the client device, however, the claim reads that a report to be produced containing data related to or influenced by at least one of the group: (i) whether the requests for resource contain information relating to the capabilities of a client device to receive and/or process and/or display data; (ii) the capabilities of the resource server to output resources having different network transmission and/or data-presentation characteristics; (iii) network transmission and/or data-presentation characteristics of an intermediary device in said network disposed in a communication pathway between said client device and said resource server; (iv) the characteristics of settings of configurable settings of the server, or client device, or an

intermediary device in a communication pathway in the network between the resource server and the client device. Logston discloses at least (iv) in [0082] which discloses reporting of client device configurations, characteristics, and settings. This paragraph of Logston also discloses at least (x) of claim 52.

5. Applicant's arguments with respect to claims 1-10, and 12-40 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN J. JAKOVAC whose telephone number is (571)270-5003. The examiner can normally be reached on Monday through Friday, 7:30 am to 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason D. Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/RJ/

/Jason D Cardone/
Supervisory Patent Examiner, Art Unit 2445